

carried out, then you vote in favor of this amendment.

THE CHAIRMAN: Does any other delegate desire to speak in opposition to the amendment?

Delegate Willoner.

DELEGATE WILLONER: Mr. Chairman, I wish to speak in opposition to this amendment. I wish to point out several things that differ in this amendment from the present state of the law.

First, the Weeks case provides for exclusion of evidence seized in violation of this article in criminal cases, only. But a State can obtain a warrant; a citizen could not. So a citizen could never gather information with a warrant under this provision. Therefore, we would not only be excluding evidence, but ending the possibility of ever getting evidence.

Secondly, we now have a prohibition against wiretapping and eavesdropping evidence being admissible in evidence. This is provided by statute. So not only is it illegal to obtain wiretap and eavesdrop evidence, but it is also inadmissible evidence in court. So that is already prohibited.

There is what I would call a purist reason for objecting to this particular amendment, and that is that this changes the concept of the Bill of Rights as it is proposed. The Bill of Rights is a series of "Thou shalt nots." This is not a "Thou shalt not." It is not that the State shall not do something but that an individual or private persons shall not.

For this reason, I want to urge that you vote against this amendment.

THE CHAIRMAN: Does anyone desire to speak in favor?

DELEGATE BOTHE: Mr. Chairman, I would like to speak very briefly. I was going to sit down and say I would vote against sex if you vote against this amendment. But, Delegate Willoner, as far as the wiretap evidence concerned being excludable, it is only wiretap and not eavesdropping devices which are excluded by statutes under Maryland law today.

Secondly, as for the constitution providing only for limitations on the action of the State, this amendment does not call for any limitation on private action. It merely says that the Courts shall not countenance abuse of the 4th Amendment or section 4 of our new constitution, which is certainly an element of state action; and for these reasons, I would suggest that both of the

points which Delegate Willoner has raised and ones which I respect, if accurate, are not applicable to this amendment which is proposed here.

THE CHAIRMAN: Delegate Bothe, in view of the statements by Delegate Willoner and your reply, the Chair would like to ask a question or two for the information of the Committee on Style.

Your amendment in lines 3 and 4 says "evidence secured in violation of these provisions." Can you indicate what is referred to by the words "these provisions"? In other words, does it refer to the whole of section 4, or does it refer only to lines 43 to the end?

DELEGATE BOTHE: Mr. Chairman, it would refer to the whole of section 4. However, as has been pointed out by me and by Delegate Willoner, the possibility of a private citizen being able to obtain a warrant is virtually nonexistent.

THE CHAIRMAN: That is why I asked the question. The first part of section 4, as I read it, has nothing whatsoever to do with warrants. If your answer is that evidence secured in violation of these provisions means, for instance, an invasion of privacy as stated in 41. or interception of communications as stated in 39 and 40, I take it it would have nothing to do with a search warrant. Is that correct?

DELEGATE BOTHE: As applied to a case where there is no warrant and where there is an unreasonable search or seizure, there would be no admissibility.

THE CHAIRMAN: Well, to be specific, I do not understand the application of your amendment, in view of what you just said, in a private matter, a civil proceeding. Suppose one takes moving pictures of a person claiming to be injured as a result of an automobile accident. If it was deemed that those moving pictures were an unreasonable invasion of privacy of a person, would it mean that they would not be admissible in evidence?

DELEGATE BOTHE: That is correct.

THE CHAIRMAN: And the same thing would be true if an eye witness, not a moving picture camera, observed conduct which might be evidence in a divorce case? If it were deemed an unreasonable invasion of privacy it would not be admissible?

DELEGATE BOTHE: With the proviso that the court would have latitude to determine what unreasonable meant, as they do in all constitutional language.